

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 05M-57

04885

In the Matter of)	EB Docket No. 05-232
)	
DAVID EDWARD COX)	File No. EB-04-IH-0384
)	
Amateur Radio Operator and Licensee of)	
Amateur Radio Station W5OER)	

MEMORANDUM OPINION AND ORDER

Issued: November 18, 2005

;

Released: November 22, 2005

By *Order to Show Cause*, DA 05-2015, released September 29, 2005 (“OSC”), the Acting Chief, Enforcement Bureau, pursuant to delegated authority, designated this proceeding for hearing. The issues seek to determine the effect of David Edward Cox’s felony convictions on his qualifications to be and to remain a Commission licensee and, in light of the evidence adduced, to determine whether Mr. Cox is qualified to be and to remain a licensee and whether his Amateur Radio License W5OER should be revoked. *OSC*, at para. 6. In order to avail himself of the opportunity to be heard and the right to present evidence at the hearing, the *OSC* provided, *inter alia*, that Mr. Cox shall file a written appearance stating that he will appear on the date fixed for hearing and present evidence on the specified issues. *Id.* at para. 7. Such notice of appearance was required to be filed within 30 days of the release of the *OSC*. *Id.* As noted above, the *OSC* was released on September 29, 2005. Consequently, the notice of appearance was due to be filed on or before October 29, 2005. However, since that date fell on a Saturday, the notice of appearance was due to be filed on the following Monday, October 31, 2005. Sections 1.4(e)(1) and (j) of the Commission’s Rules.

The Commission sent the *OSC* to Mr. Cox by Certified Mail, Return Receipt Requested. In an affidavit obtained by the Enforcement Bureau, Mr. Cox acknowledged that he received a copy of the *OSC* on or about October 6, 2005. (EB Ex. 1, p. 1.) In addition, the Office of Administrative Law Judges mailed to Mr. Cox by Certified Mail, Return Receipt Requested, a copy of an *Order*, FCC 05M-46, released October 5, 2005, scheduling a prehearing conference in this proceeding for November 15, 2005. The Commission’s records establish that Mr. Cox received this *Order* on or about October 11, 2005. (Judge’s Ex. 1.)

The Commission’s records reflect that, to date, no written (or other) notice of appearance has been filed by, or on behalf of, Mr. Cox. Moreover, a prehearing conference was held on November 15, 2005, and no one attended or entered an appearance on behalf of Mr. Cox. Under all of these circumstances, and pursuant to Section 1.92(a)(1) of the Commission’s Rules and paragraph 8 of the *OSC*, this constitutes a waiver of the hearing.

Accordingly, pursuant to Section 1.92(c) of the Commission’s Rules and paragraph 8 of the *OSC*, IT IS ORDERED that the hearing proceeding in the above-captioned matter IS TERMINATED, and that this proceeding IS CERTIFIED to the Commission.

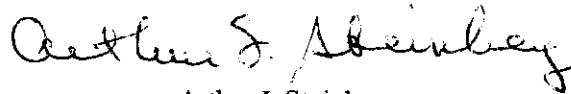
IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* SHALL BE MAILED by Certified Mail, Return Receipt Requested, to:

David Edward Cox
16420 Stoney Point Burch Road
Pride, LA 70770

and

David Edward Cox
Catahoula Correctional
499 Columbia Road
Harrisonburg, LA 71340

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Arthur I. Steinberg".

Arthur I. Steinberg
Administrative Law Judge